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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 101

KEESHIN MOTOR EXPRESS CO., INC., PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 73–78) is reported in 134 F. (2d) 228. The memorandum opinion (R. 55–58) of the district court confirming its decree (R. 36–37) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on March 15, 1943 (R. 73). The petition for a writ of certiorari was filed on June 14,

1943.[1] The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the district court was justified in granting an injunction, unlimited in territorial scope, restraining particular statutory violations of like character with those found to have been flagrant in one district served by petitioner.

2. Whether the filing of the amended complaint should have been permitted.

STATUTE AND RULES INVOLVED

The pertinent provisions of the Interstate Commerce Act, Part II, and Rules 15 (b) and 15 (c) of the Federal Rules of Civil Procedure are set forth in the Appendix, *infra*, pp. 9–12.

STATEMENT

This cause arose on a complaint filed by the Interstate Commerce Commission on June 25, 1941 (R. 2), in the district court, seeking to enjoin petitioner, a common carrier by motor vehicle, from further departures in its published tariff rates on transportation "over its lines and routes and on public highways of the United States" (R. 5, 6). The alleged violations of Sections 217 (b) and 222 (c) of the Interstate Commerce Act, Part II

[1] There has been no service upon the Solicitor General, as provided for under Rule 38 (3) of this Court.

(*infra*, pp. 10, 11–12), concerned petitioner's charges on shipments from or to points in Illinois, to or from the East St. Louis, Illinois, area, all via St. Louis, Missouri, and therefore in interstate commerce (R. 2–4). Petitioner admitted the facts as to the violations by stipulating that out of a total of 2,144 shipments transported between the points involved, from October 8, 1940, to September 30, 1941, there were 648 shipments on which incorrect charges were assessed, of which 604 were undercharges (R. 14–16, 30–31, 39). On November 25, 1941, a hearing was held (see R. 32) on the stipulated facts (R. 14) and on the pleadings (R. 2, 11).

Thereafter, on December 2, 1941, the court indicated that judgment would be entered enjoining tariff departures on transportation between points in any one state through another state, provided that an amended complaint be filed in accordance therewith conforming to the evidence (R. 55). On December 3, the amended complaint (R. 29, 34) was submitted to the court, with motion for leave to file. On December 6, 1941, leave was granted to file the amended complaint instanter (R. 29), and on the same date the court entered its findings of fact, conclusions of law and judgment (R. 32–37), permanently enjoining petitioner from charging other than its effective tariff rates on transportation between places in any one state through another state. Petitioner contends that

the injunction should have been limited to the St. Louis area where the violations were shown.

On December 11, leave was granted to file an amended answer (R. 39, 43) and further hearing was ordered (see R. 55–56). On February 4, the parties filed a stipulation of additional facts (R. 48–54), and on March 9, 1942, argument was heard on various motions, and further hearing was held on the amended complaint and answer and on the two stipulations. On March 11, 1942, the court entered an order confirming its decree of December 6, 1941 (R. 55–58). This order was affirmed in all respects by the circuit court of appeals on March 15, 1943 (R. 73–79).

ARGUMENT

The decision of the court below is in conformity with well-established principles of law laid down by this Court, and with other decisions of the circuit courts of appeals. The right to injunctive relief being shown, relief effective in all respects to meet the particular facts and circumstances of the case is necessary and proper, and is required under the statute. *National Labor Relations Board* v. *Express Publishing Company,* 312, U. S. 426, 436, 437; *Local 167, I. B. T., etc.,* v. *United States,* 291 U. S. 293, 299; *United States* v. *Union Pacific R. R. Co.,* 226 U. S. 61, 96; *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 405; *National Labor Relations Board* v. *Swift & Co.,* 108 F.

(2d) 988, 990 (C. C. A. 7); *Securities and Exchange Commission* v. *Lawson*, 24 F. Supp. 360, 365 (D. Md.).

1. The Interstate Commerce Act, Part II, Section 222 (b), *infra*, p. 11, provides for injunctive relief whenever operation by any motor carrier subject thereto is found to be "in violation of any provision of this chapter." By the uncontroverted facts found herein, there occurred 708 violations of Sections 217 (b) and 222 (c) of the Act in the St. Louis district, over a period of less than fifteen months, 60 of which occurred after this action was filed (R. 16, 49). This indicates, and the court so found, that there existed at least a "reasonable" probability that the unlawful practice would be continued unless enjoined (R. 35). The injunction granted is no broader than is necessary to restrain related acts of the same type as the extensive and repeated violations shown; it does not go outside the complaint, the evidence of record, and acts reasonably to be anticipated therefrom. Because of the great number of violations of a particular type proven in the St. Louis district, it is important that the injunction be adequate to restrain any acts of the same type, wherever they might occur.

The right of the Commission to obtain an injunction, and the scope of such injunction, should be judged in the light of the statute which pro-

vides for it. The intentions of the parties are immaterial on the question of concessions, rebates, and unlawful preferences, intent being imputed where the effect is a violation of the law. *Armour Packing Co.* v. *United States,* 209 U. S. 56, 86; *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 398; *Cleveland, C., C. & St. L. Ry. Co.* v. *Hirsch,* 204 Fed. 849, 852 (C. C. A. 6); *United States* v. *Northern Pac. Ry. Co.,* 18 F. (2d) 299, 304 (E. D. Wash.)

The extent to which a court of equity may grant or withhold its aid, and the manner of moulding its remedies, may be affected by the public interest involved. *United States* v. *Morgan,* 307 U. S. 183, 194; *Virginian Ry. Co.* v. *System Federation,* 300 U. S. 515, 552; *Pennsylvania* v. *Williams,* 294 U. S. 176, 185; *Central Kentucky Gas Co.* v. *Railroad Commission,* 290 U. S. 264, 271. A federal court is not limited to the restraint of unlawful acts committed, but may restrain related acts of the same type or class if these may be fairly anticipated in the future. *National Labor Relations Board* v. *Express Publishing Co.,* 312 U. S. 426, 435; *United States* v. *Union Pacific R. Co.,* 226 U. S. 61, 96; *Bitterman* v. *Louisville & N. R. Co.,* 207 U. S. 205, 227, 229; *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 405; *Swift & Co.* v. *United States,* 196 U. S. 375, 400, 401. The fact that evidence

of violations relates only to one geographical district does not mean that the disposition to violate is similarly limited.

2. The district court permitted the filing of the amended complaint in accordance with Rule 15 (b) of the Federal Rules of Civil Procedure in order that the relief warranted by the evidence might be granted. The court also permitted the filing of an answer to the amended complaint (R. 43), and after further hearing, and with a supplemental stipulation of facts before it which disclosed 60 further violations of the same character during the months October, November, and December of 1941 (R. 48–50), affirmed its decision of December 6, 1941. This allowance of the amendment and the issuance of a decree based thereon clearly did not, in the circumstances, constitute an abuse of the court's discretion.[2]

The answer to the amended complaint expressly admitted every allegation of fact concerning deviations from petitioner's published tariffs. The filing of the amended complaint was in precise consonance with the very purpose of Rule 15 (b), *i. e.*,

[2] The amended complaint was filed at the court's suggestion because of a controversy between counsel as to whether the first complaint was meant to encompass the St. Louis district alone (R. 74, 76). However, the original complaint requested relief unlimited to the St. Louis district (R. 5–6), and the filing of the amended complaint seems accordingly to have been an unnecessary formality.

to avoid unnecessary litigation and to obtain speedy adjudication upon facts encompassing all of the material issues before the court. Under Rule 15 (c) which furthers the same purpose, the amended complaint relates back in all respects to the date of the original pleading, upon which the stipulated facts were agreed by the parties. The decision in *Simms* v. *Andrews*, 118 F. (2d) 803 (C. C. A. 10), upon which petitioner relies (Pet. 20–21), deals with an entirely different situation and is not contrary to respondent's position.

CONCLUSION

The decision below is correct. It presents no conflict or question which warrants further review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1943.